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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Z. T., et al., Persons Coming Under
the Juvenile Court Law.

B168707
(Los Angeles County
Super. Ct. No. CK47391)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

CELIA T.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Anthony Trendacosta, Referee. Affirmed.

Harry Zimmerman, under appointment by the Court of Appeal, for Defendant and Appellant.

DeWitt W. Clinton, County Counsel, Larry Cory, Assistant County Counsel, and Jacklyn K. Louie, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

Celia T., the mother of minors Z.T. (born September, 1992) and Angel (born September, 1999), appeals from the order of the juvenile court denying her petition under Welfare and Institutions Code Section 388 (hereafter referred to as section 388) for placement of the minors with her “or with any other lesser remedy including additional visits.” We find no abuse of discretion and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

The children of Celia T., two of whom are involved in this appeal, have been the subject of child abuse referrals since 1994. Celia’s three other children, born in 1994, 1995 and 1998, reportedly live with their father. Z. and Angel came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on January 7, 2002, when their paternal aunt, who lived in the same building, reported abuse to the Long Beach Police Department. Z. was then nine and Angel two. The officers found the apartment in which Celia lived, with Angel’s father Roberto C. and the two minors, to be a “complete mess.” Celia was “hysterical and acting strange.”

Z. was also hysterical and very fearful of her mother. She had several red scratch marks on her arm and red marks on the side of her face. She reported that after she told her mother she did not want to live with her anymore and wanted to live with her grandmother, her mother hit her in the face and then grabbed her to prevent her from leaving the apartment. Z. also reported that her mother had kicked her in the ribs, that she often calls her “the B word” and “a ho,” and that she has “white powder and a pipe and smokes it in front of us.”

Angel was found on the floor with Celia and Roberto, who was on parole for armed robbery. Angel was in diapers heavily soiled with urine and feces. There was no food in the apartment, except two cans in the cupboard. Celia tried to give Angel a bottle with curdled sour milk, which he refused. Z. told the officers that she sometimes went to bed without eating.

The minors were detained, and a petition under section 300 filed. The minors were very close, and fortunately were placed in the same foster home on January 22, 2002. At the hearing on March 6, 2002, Celia plead no contest to allegations of physical

abuse of Z., that she had a history of drug abuse and used drugs in the presence of the children and left drug paraphernalia in the presence of the children, that the house was found in a filthy and unsanitary condition, that she assaulted Roberto in the presence of the children, and that Roberto also had a history of drug use, all of which placed the minors' physical and emotional health and safety at risk.

Z. was reported to be a very bright and normally cheerful child. Though thin, she was in good health and was doing well at her new school and in the placement. She appeared to accept major painful events as an ordinary fact of life, and was "parentified" on Angel's behalf. It was recommended that she immediately begin therapy.

Angel was found to be anemic and suffering from an eye infection, but otherwise appeared to be achieving normal milestones for a two year old.

At the time of the March hearing, Celia had only visited once and had been late in arriving, which upset Z. very much. Celia and Roberto were recognized as having long-standing drug abuse problems. Referrals to a drug treatment program were offered, as well as bus passes, but they said that they had a program they would attend.

Celia was not present in court for the disposition hearing on April 9, 2002. Family reunification was ordered, to include individual and conjoint counseling, parenting classes, and drug counseling with random testing. Monitored visitation was ordered for Celia. By July, it was reported that Celia's whereabouts were unknown, and that she had not even had telephone contact with the children in over two months. The children were placed in a new foster home in September because the original foster mother experienced a family emergency. They were placed with Mrs. C. who was the director of the day camp that Z. attended. Celia's whereabouts remained unknown, and since May she had not contacted the foster family agency, the social worker or the children.

In October 2002, the social worker still had had no contact from Celia, and recommended termination of reunification services. Celia was not in compliance with the case plan and had not contacted anyone to inquire about the children's well-being. Not having had any contact with Celia for over six months, the court terminated

reunification services in November and scheduled a permanency planning hearing on March 20, 2003.

On December 19, 2002, the children were placed together in a prospective adoptive home and by March were reported to be doing well there. Z. initially experienced a period of difficulty in adjusting, she became more comfortable in her new environment and was beginning to be able to express her feelings more appropriately than she had in the past. She got along well with her prospective adoptive mother, and though she had attended four different schools in her young life, was doing well in the fourth grade and was considered to be self-confident and friendly by her teacher.

Z. was aware that her present caregivers were interested in adopting her and her brother. While the topic of adoption was a sensitive issue for her, she had told the children's services worker (CSW) that she did not like moving around from foster home to foster home, and she excitedly spoke of her plans to decorate her own bedroom where she had put her photos and artwork on display. Within a month of being placed in the prospective adoptive home, Z. had suggested that there be a family portrait taken of the caregivers, Angel and herself, and suggested that a plaque be put up next to the photo reading "Home Sweet Home." She also told the CSW that she knew that some parents were not able to live with their children because they hurt them or do not take care of them.

Celia was located at a drug program in Long Beach on February 19, 2003, where she met with a children's services worker. Celia related that her mother had died of a drug overdose on December 1, 2002, which forced her to reevaluate her own lifestyle. She reported that she had been homeless and deeply into her drug addiction from May to November 2002, had been briefly in a drug program in December and then arrested in January, after which she entered the new program on February 12.

The recommendation of the DCSF was that Celia's parental rights be terminated, noting that it was important that Z. and Angel not be separated and that the present caregivers were committed to adopting them both. They had purchased a bigger house in

anticipation of the adoption, and the adoptive mother had reduced her working hours from full-time to part-time in order to spend more time with the children.

At the hearing on March 20, 2003, adoption was identified as the permanent plan for the minors, although parental rights were not then ordered terminated. The matter was continued until July 17 for further efforts to locate and notify the fathers of the children, by publication if necessary.

A progress report prepared in May noted that the children were getting along very well in the prospective adoptive home, and that they referred to these caretakers as “Mom” and “Dad.” Z. was reported to be increasingly more affectionate with her caretakers, and often told them that she loved them. On the recommendation of Z.’s therapist, Celia had her first monitored visit in over a year with the children on April 21, 2003. Both children appeared to enjoy the visit, Celia acted appropriately, and at the end there was a calm good-bye. The prospective adoptive parents arrived to pick up the children and there was a cordial exchange between them and Celia. During this time, Z. stood next to her prospective adoptive father. A second monitored visit took place in April, during which Celia again acted appropriately. Celia admitted being confused as to why she was being permitted visits when the recommendation was for termination of her parental rights. Z.’s therapist recommended monthly monitored visits, and the department recommended that visits continue until parental rights were terminated. The matter was further continued to September, in order to accomplish proper notification to the minors’ fathers.

On June 5, 2003, Celia filed a petition under section 388, seeking a modification of the court’s orders. She requested that the children be placed with her “or any lesser included remedy.” Celia asserted that she had changed her life and was ready, willing and able to make a home for her children, based on reports she attached to her petition which evidenced that she was doing well in both drug counseling and parenting classes in which she had been involved for about three months. The reports also indicated that she had been drug free during that time and appeared to be highly motivated to be able to take care of her children.

The section 388 petition was ultimately heard on July 14, 2003. In addition to the reports submitted with her original petition, the court considered letters from appellant's drug counseling and parenting classes, which indicated continued progress on her part up to the date of the hearing. It was reported that Celia continued to reside in a residential drug and alcohol program and had been clean for five months. She had completed parenting classes and had four sessions remaining to complete her domestic violence counseling program.

Celia acknowledged to the court, through her attorney, that she had not been able to that point to care for her children, and that it had been in their best interests to be placed in foster care. She also expressed her gratitude for the work of the social worker and the foster parents. Her request for modification was based on her belief that she had made great progress in her life, she had a great desire to reunify with her children, and because the children would benefit from being returned to her in light of the significant bond between her and the children.

The court denied the petition. While recognizing and "applauding" Celia's attempt to turn her life around, the court found that it could not conclude that the children's safety and stability would be promoted by the modifications requested by appellant. Celia filed timely notice of appeal from the court's order denying the section 388 petition.

DISCUSSION

A. Standard of Review

"A dependency court order may be changed or modified under . . . section 388 if a petitioning parent establishes one of the statutory grounds, changed circumstance or new evidence, for the modifications, and also proves the proposed change would promote the best interests of the child. [Citation.] The parent requesting the change of order has the burden of establishing that the change is justified. [Citation.] The standard of proof is a preponderance of the evidence. [Citation.]" (*In re Michael B.* (1992) 8 Cal.App.4th 1698, 1703.) "Whether a previously made order should be modified rests within the

dependency court's discretion, and its determination will not be disturbed on appeal unless an abuse of discretion is clearly established. [Citation.]" (*Id.* at p. 1704.)

"[W]hen a court has made a custody determination in a dependency proceeding, "a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion in making an arbitrary, capricious, or patently absurd determination [citations]." [Citations.] . . . 'The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

B. The Court did not Abuse its Discretion in Denying the Petition.

Appellant contends that the court abused its discretion by applying the wrong legal standard in denying the section 388 petition. She asserts that the juvenile court failed to analyze the necessary factors as set forth in *In re Amber M.* (2002) 103 Cal.App.4th 681, 685, and *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530-532, i.e., the seriousness of the problem leading to the dependency, the reason for its continuation, the strength of the parent-child and child-caretaker relationship, the time the child has been in the system, the nature of the change of circumstances, the ease by which it could be achieved, and the reasons it did not occur sooner. Appellant argues that had the court conducted this analysis, appellant's accomplishments in such a short time and her relationship with then 11-year-old Z. would have demonstrated that she was entitled to additional reunification services to allow her to reestablish her relationship with the children.

Appellant had the burden to show by a preponderance of the evidence a change of circumstance and that her proposal for a change in the minors' custody would be in the minors' best interest. It is true that appellant established a change of circumstance, in that she had made significant changes in her life and appeared to have committed to giving up drugs and trying to establish a home for herself. The court commented on the progress that appellant had demonstrated. But in addition to appellant's changes, however significant, appellant also had the burden to demonstrate that the minors' best

interests would be served by a change of order. The issue then was whether the court exceeded the bounds of reason in concluding that, despite the change of circumstances, it was not in the minors' best interest to make a change of placement or increase visitation.

Although appellant contends that the court failed to consider the relevant factors in ruling on the petition, the record reflects that the court had before it all of the evidence with which to analyze the factors set forth in *Amber M.* and *Kimberly F.* The court noted that in addition to appellant's petition and its attachments and later filed documents, it had three reports from the department: the response to the section 388 petition, and information for court officer, both dated July 14, 2003, and the status review report dated May 22, 2003. The May 22 report contained information about the dependency proceedings from the time of the initial detention of the children on January 7, 2002. It included information as to each of the five different foster home placements that the children had experienced, appellant's exceedingly scanty visitation history with the children, and psychological evaluations of both Z. and Angel completed in March and April of 2003.

Perhaps the most significant information before the court was the evidence of the stability of the prospective adoptive placement that the minors were enjoying. It was clear that the prospective adoptive parents valued the minors. This was reflected in the manner in which they carefully monitored and provided for the minors' emotional and physical well-being, supervised their education, cooperated with the department, purchased a larger home to accommodate the minors, considered it important that the children stay together, made themselves more available to care for the minors and were sensitive to the difficult experiences that the minors had suffered.

The positive results of the care being provided to the minors was reflected in the progress they were making and in the sense of security they could enjoy with these foster parents. Recognizing that she had not established much of a bond with Angel, appellant relies primarily on the bond she had with Z. While it is clear that Z. loves her mother, it is also clear that she is disappointed in the relationship with her mother and realizes that

she is better off in the safety and stability of her new home. Z. clearly longed for security and safety, and wanted to be “Home Sweet Home” with a family.

Furthermore, it is clear from appellant’s arguments on appeal that appellant recognized that at the time of the section 388 hearing she was not able to reunify with her children, or to provide for them as a parent. Rather, what she was actually seeking was to begin the reunification process over again to give her another chance to reunify with her children. While we are hopeful that appellant’s change and determination will carry her forward, from the point of view of the dependency proceedings and at the time of the section 388 petition, it was certainly not clear whether appellant’s resolve would continue to support a *permanent* change in her lifestyle. A modification of order based on changing circumstances “would mean delaying the selection of a permanent home for a child to see if a parent, who had repeatedly failed to reunify with the child, might be able to reunify at some future point” and would not promote stability for the children or be in their best interests. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47, citing *In re Edward H.* (1996) 43 Cal. App.4th 584, 594.)

We find no abuse of discretion in the juvenile court’s denial of appellant’s section 388 petition.

DISPOSITION

The order of the juvenile court denying appellant’s petition under section 388 is affirmed.

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_____, J.
DOI TODD

We concur:

_____, P. J. _____, J.
BOREN ASHMANN-GERST